STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KENNETH ROHRBOUGH,   )
)
        Plaintiff,   )
)
vs.   )   Case No. 4:07CV00996 ERW
)
LUTHER HALL, et al.,   )
)
        Defendants.   )

**EMERGENCY MOTION OF THE ST. LOUIS POST-DISPATCH
AND REPORTER ROBERT PATRICK
SEEKING TO PRESERVE COURT CUSTODY OVER
AND ACCESS TO EXHIBITS OFFERED AT TRIAL**

The St. Louis Post-Dispatch, LLC and Robert Patrick ("Movants") file this emergency motion seeking to preserve court custody over and to obtain access to exhibits offered at trial, and in support thereof, state:

1.   The St. Louis Post-Dispatch is a newspaper of general circulation in and around St. Louis, Missouri. Robert Patrick is a reporter for the St. Louis Post-Dispatch.

2.   During the trial of this cause, Robert Patrick became aware of a certain exhibit, namely Internal Affairs files introduced as Exhibit 18 during the trial of this cause ("Exhibit 18"), which he has been advised is subject to a protective order and, as such, will not be made available to the press or public despite his request.

3.   Movants believe that Exhibit 18, among other documents order produced in discovery, was subject to a protective order, which prohibited the parties from releasing such documents to the public and which required that upon conclusion of this case such documents would be returned to the producing party. However, although Movants have been told that such

materials remain subject to a protective order, Movants have not seen, and are not aware of, any protective order covering such materials once introduced as exhibits at trial.

4.   Court proceedings and materials offered as exhibits during court proceedings and accepted into evidence are presumptively open and available for public viewing and circumspection by virtue of the constitution and the common law. Such materials can be sealed or closed to the public only upon exceptional circumstances shown and articulated in written findings by the Court. Records disclosed under protective order during discovery in civil litigation, but later specifically referred to at trial and admitted into evidence, constitute judicial records to which the press and the public have a right of access. *See, e.g., Littlejohn v. BIC Corp.*, 851 F.2d 673 (3d Cir. 1988); *In re Continental Illinois Securities Litigation*, 732 F.2d 1302 (7th Cir. 1984).

5.   Movants file this motion on an emergency basis based on this Court's order (Doc. 43) filed on September 18, 2008, in which this Court sealed the materials sought in this motion, and ruled that upon final conclusion of the action, all such materials would be returned to defendant. Consequently, Movants are concerned that such materials may become unavailable.

6.   Movants intend to supplement this motion with further authority and information in due and proper course.

WHEREFORE, Movants the St. Louis Post-Dispatch and Robert Patrick move this Court:

A.   To retain appropriate custody of the Internal Affairs files introduced at the trial of this cause herein as Exhibit 18 until hearing and consideration of this Motion and any supplement thereto.

B.   To set this matter for hearing at the earliest available opportunity.

C.   For such other and further relief as to this Court deems appropriate.

LEWIS, RICE & FINGERSH, L.C.

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Attorneys for Movants St. Louis Post-Dispatch, LLC and Robert Patrick

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of April, 2010, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on the following:

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